HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No.1416 of 2003 (SS)

Sub. Om Prakash vs. Union of India & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 31.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1416 of 2003* (SS)

Sub. Om Prakash …… Petitioner

Versus

Union of India and others ……... Respondent

Sri B.P. Nautiyal Advocate for the petitioner
Standing Counsel (Central) for the respondents.

Dated: 31.12.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari for quashing the order dated 9.10.2003 passed by the respondent no. 2.

Briefly stated the facts giving rise to the present writ petition are that petitioner at present is posted in A.G. & E. B/R, Mussoorie which is sub division of GE (I) R & D, Dehradun since April 2003. The petitioner has stated that he has been frequently transferred by the respondents at various places and in the last 10 months he has been transferred at three places. The petitioner has further stated that his

wife has expired on 8th October 2003 leaving behind school going children who are studying at Mussoorie.

The Grievance of the petitioner is that his transfer order was passed without any administrative exigency or public interest.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:*

"In our opinion, the court should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administrative, which

would not be conductive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner is at liberty to approach the higher authority.

The Apex Court in the case State Bank of India vs. Anjan Sanyal and others (2001) 5 SCC 508. It has held as under:

"An order of transfer of an employee is a part of the service condition as such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the orders, had not the competence to pass the order."

However, in the case of Director of School Education vs. O. Karuppa Thevan and another (1994 Supp (2) Supreme Court Cases 666 the Apex Court has held as under:

When the authorities made the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view

that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside thet impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

The petitioner shall be at liberty to make a representation to the respondents against his transfer order dated 9.10.2003.

The respondents are directed to consider the representation of the petitioner and to pass appropriate orders in the light of the observations made above, within a month after the receipt of certified copy of the order. The transfer order shall remain in abeyance for a period six weeks only, if the petitioner has not already been relieved.

Subject to the aforesaid observations the writ petition is dismissed. No order as to costs.

31.12.2003
*Dhyani